IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1244 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

@

HARENDRA MADANJIT DESAI

Versus

VALSAD NAGARPALIKA

Appearance:

1. Special Civil Application No. 1244 of 1998

MR PJ KANABAR for Petitioner No. 1

MR SUNIL C PATEL for Respondent No. 1

MR RS SANJANWALA for Respondent No. 2-11,13-17

..... for Respondent No. 12

MR RM CHAUHAN, AGP for Respondent No. 18-19

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 20/08/2002

ORAL JUDGEMENT

#. The petitioner has challenged the order passed by the Collector, Valsad in Appeal No.10 of 1996 as well as the order of the State Government dated 25.11.1997 passed in Revision Application Nos.28 and 29 of 1996.

#. Valsad Nagarpalika has granted construction permission to respondent nos.2 to 4 herein on 4.12.1991. The petitioner had entered into the agreement with respondent nos. 2 to 4 on 28.3.1988 for the purpose of developing the property in question. The petitioner had challenged the said action by filing the appeal under section 258 of the Gujarat Municipalities Act, which was numbered as Appeal No.10 of 1996. The petitioner has challenged the said permission granted by the municipality on various grounds. It is the say of the petitioner that he has not signed any document for getting permission for construction and that respondent nos.2 to 4 had acted contrary to the agreement in question. The Collector, after hearing all the concerned parties, partly allowed the said appeal of the present petitioner. The Collector directed the petitioner to obtain necessary relief from the Civil Court in connection with the agreement in question, which he has entered into with respondent nos. 2 to 4. The Collector restrained the municipality from granting any revised plan submitted by respondent nos. 2 to 4 till the decision of the Civil Court. The petitioner, thereafter, filed two revision applications before the State Government, i.e. Revision Application Nos.28 and 29 of 1996. The said revision applications were dismissed by the Deputy Secretary of the State by order dated 25.11.1997. The revisional authority came to the conclusion that, the dispute in question is required to be resolved only through the Civil Court. The revisional authority accordingly confirmed the order of the Collector and dismissed the revision applications filed by the petitioner. This petition is ultimately filed challenging the aforesaid order of the State Government as well as the order of the Collector.

#. On behalf of respondent No.2, affidavit-in-reply has been filed, which is at page 51 of the petition. It is stated in the said affidavit-in-reply that the petitioner has already approached the Civil Court and the civil suit is pending. It is submitted that the petitioner has suppressed the aforesaid fact from this petition. It is stated in the reply that the civil suit being Civil Suit No.65 of 1995 is filed by the petitioner and the points, which are taken herein, have been raised in the said proceedings and that the matter is also referred to the Arbitrator consisting of three advocates.

#. Considering the fact that the petitioner has already moved the Civil Court against the developer and considering the fact that the Collector has given appropriate reasons at the time of partly allowing the appeal of the petitioner, in my view, this petition is not required to be entertained especially when the dispute between the petitioner and the developer is already sub-judice before the appropriate Court and now the matter is also referred to the Arbitrator as pointed by respondent NO.2 in the affidavit-in-reply. Even, apart from the said fact, the Collector has passed a very well reasoned order, while passing the order under section 258 of the Gujarat Municipalities Act and he has partly allowed the appeal of the present petitioner. Considering the aforesaid well reasoned order of the Collector and considering the fact that the petitioner has already moved the Civil Court, this petition cannot be entertained and is accordingly dismissed on the aforesaid ground. Rule is discharged with no order as to costs.

(P.B.Majmudar,J)

(pathan)